

STATE OF INDIANA )  
 ) SS:  
COUNTY OF SULLIVAN )

IN THE SULLIVAN SUPERIOR COURT

CAUSE NO. **7201-0511-PL-00409**

STATE OF INDIANA,

Plaintiff,

v.

NELSON E. BAKER, SR.,  
individually and doing business as  
SPARETIME ENTERPRISES,

Defendant.

**FILED**  
IN CIRCUIT COURT  
NOV 30 2005

*Spelly Ann Davis*  
Clerk Sullivan Circuit Court

COMPLAINT FOR INJUNCTION, RESTITUTION, COSTS AND CIVIL PENALTIES

The State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Eric Jackson, petitions the Court pursuant to the Indiana Business Opportunity Transactions Act, Indiana Code § 24-5-8-1 et seq., and the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-1 et seq., for injunctive relief, consumer restitution, civil penalties, investigative costs, and other relief.

FACTS

1. The Defendant, Nelson E. Baker Sr., is an individual doing business as Sparetime Enterprises with a principal place of business at P.O. Box 142, Mount Vernon, Ohio.

2. Since at least December 15, 2003, the Defendant has sold a mushroom-growing business opportunity to the general public and has engaged in the solicitation of said business opportunity within the State of Indiana.

3. The Defendant solicited and entered into contracts for the sale of said business opportunity with Indiana investors including, but not limited to, Peter and Reeta Willis ("the Willises") of Sullivan, Indiana, who paid Two Thousand Six Hundred Dollars (\$2,600.00) to the

Defendant on or about December 15, 2003. A copy of the Willises contract with Defendant is attached and incorporated by reference as Exhibit 'A'.

4. Defendant's contract with the Willises failed to include the following information:
  - a. the name and business address of Defendant's agent in Indiana authorized to receive service of process;
  - b. the terms and conditions of payment;
  - c. a detailed description of any services that Defendant undertakes to provide to the investor;
  - d. a detailed description of any training that Defendant undertakes to provide to the investor;
  - e. the approximate delivery date of any goods Defendant is to deliver to the investor; and
  - f. a statement of the investor's thirty (30) day right to cancel the contract.
5. As part of his solicitation, the Defendant provided the Willises a document stating that a market existed for the mushrooms and that the market had "been good for many years and the price does not fluctuate or go down".
6. The Defendant did not provide the Willises with a copy of a disclosure document containing the information required by Ind. Code § 24-5-8-2.
7. The Defendant did not obtain a surety bond in favor of the State of Indiana for the use and benefit of investors prior to his transaction with the Willises.
8. The Defendant did not file his disclosure statement or bond with the Consumer Protection Division of the Indiana Office of Attorney General nor did he pay the initial filing fee of Fifty Dollars (\$50.00) prior to his transaction with the Willises.

9. The Willises paid the Defendant the full purchase price of Two Thousand Six Hundred Dollars (\$2,600.00) prior to the Defendant delivering any of the goods.

10. The Defendant has paid the Willises Two Hundred and Ten Dollars (\$210.00) dollars for the mushrooms they grew.

11. On or about July 13, 2004 the Willises gave the Defendant written notice requesting a refund.

12. The Defendant's offer of selling mushroom spawns to investors who would then grow, harvest, dry and sell the mature mushrooms back to the Defendant in order to make a profit is a "business opportunity" as defined by Ind. Code § 24-5-8-1.

COUNT I - VIOLATIONS OF THE BUSINESS OPPORTUNITY TRANSACTIONS ACT

13. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 12 above.

14. The Defendant's failure to provide Indiana investors, including but not limited to the Willises, with the disclosures required by Indiana law at least seventy-two (72) hours before the earlier of the investors' execution of a business opportunity contract with the Defendant or receipt of any consideration by the Defendant, as referred to in paragraph 6 above, is a violation of Ind. Code § 24-5-8-2.

15. The Defendant's failure to obtain a surety bond in favor of the State of Indiana, as referred to in paragraph 7 above, is a violation of Ind. Code § 24-5-8-3.

16. The Defendant's failure to file a copy of the disclosure statement and surety bond and pay the filing fee with the Consumer Protection Division of the Office of the Attorney General prior to placing any advertisement or making any representation to any Indiana investor about his business opportunity, as referred to in paragraph 8 above, is a violation of Ind. Code

§ 24-5-8-4.

17. The Defendants' failure to include the information detailed in paragraph 4 above in his contracts is a violation of Ind. Code § 24-5-8-6(b).

18. The Defendant's act of requiring the Willises to pay the entire purchase price prior to delivering goods, as referred to in paragraph 9, violates Ind. Code § 24-5-8-12 as the payment from the investor exceeded twenty (20%) percent of the initial payment before the goods were delivered.

19. Due to the foregoing violations of Ind. Code § 24-5-8-2, Indiana investors, including the Willises, have a statutory right to cancel their business opportunity contracts with the Defendant in accordance with Ind. Code § 24-5-8-15.

20. Due to the Defendants foregoing violations of Ind. Code § 24-5-8-6(b), the Willises have a statutory right to void the contract and receive the return of all the consideration they paid the Defendant in accordance with Ind. Code § 24-5-8-16.

21. In accordance with Ind. Code § 24-5-8-20, the Defendant's violations of Indiana's Business Opportunity Transactions Act, Ind. Code 24-5-8-1 et seq. are violations of Indiana's Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-1 et seq.

## COUNT II – KNOWING VIOLATIONS OF THE BUSINESS OPPORTUNITY

### TRANSACTIONS ACT

22. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 21 above.

23. The Defendant's violations of Indiana's Business Opportunity Transactions Act, Ind. Code § 24-5-8-1 et seq. were committed with knowledge.

### IRREPARABLE HARM

24. The deceptive acts set forth above will continue and will cause irreparable injury unless the Defendant is enjoined from engaging in further conduct which violates Ind. Code § 24-5-8-1 et seq., and § 24-5-0.5-1 et seq.

### RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court to enter a judgment against the Defendant and order the following relief:

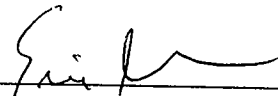
- a. A permanent injunction pursuant to Ind. Code § 24-5-8-18 and Ind. Code § 24-5-0.5-4(c)(1), enjoining the Defendant, his agents, representatives, employees, successors, and assigns from engaging in conduct in violation of Ind. Code § 24-5-8-1 et seq., or Ind. Code § 24-5-0.5-1 et seq.;
- b. Voiding the Defendant's business opportunity contacts with the Willises, pursuant to Ind. Code § 24-5-8-16 or in the alternative cancellation of the contract, pursuant to Ind. Code § 24-5-8-15, and Ind. Code § 24-5-0.5-4(d);
- c. Restitution pursuant to Ind. Code § 24-5-0.5-4(c)(2) and (d), in the amount of all consideration paid to the Defendant by Indiana investors, including but not limited to Two Thousand Three Hundred Ninety Dollars (\$2,390.00) on behalf of the Willises.
- d. Costs pursuant to Ind. Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;
- e. Civil penalties pursuant to Ind. Code § 24-5-0.5-4(g), for the Defendant's knowing violations of the Deceptive Consumer Sales Act, in the amount of Five

Hundred Dollars (\$500.00) per violation, payable to the State of Indiana; and

f. All other proper relief.

Respectfully submitted,  
Steve Carter  
Attorney General of Indiana  
Atty. No. 4150-64

By: \_\_\_\_\_

  
Eric Jackson  
Deputy Attorney General  
Atty. No. 19415-49

Office of the Attorney General  
Indiana Government Center South, 5<sup>th</sup> floor  
302 W. Washington Street  
Indianapolis, IN 46204  
(317)233-3987

# CONTRACT

SPARETIME ENTERPRISES  
P.O. BOX 142  
MOUNT VERNON, OHIO 43050

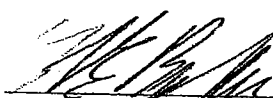
TO WHOM IT MAY CONCERN

SPARETIME ENTERPRISES DOES HEREBY AGREE TO PURCHASE FROM  
PETER WILLIS 2005 W. CO. RD. 450 S. SULLIVAN, IN 47882

THE MUSHROOMS GROWN FROM THE SPAWN PURCHASED FROM SPARETIME  
ENTERPRISES AT \$30.00 PER POUND DRIED. THE MUSHROOMS ARE TO BE ORGANICALLY  
GROWN AND DRIED BY NATURAL MEANS ACCORDING TO OUR INSTRUCTIONS.

~~AGREE TO GIVE HELP AND ASSISTANCE IF NEEDED AND TO REPLACE ANY KITS THAT DO  
NOT PERFORM SATISFACTORY AT NO COST~~

WITNESS 17th DAY, MONTH OF DECEMBER YEAR 2003

  
N. E. BAKER

  
WITNESS

